# In the Missouri Court of Appeals
# Eastern District

## WRIT DIVISION TWO

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| STATE OF MISSOURI ex rel. KILROY WAS HERE, LLC, et al., | ) | No. ED109351 |
| Relators, | ) | Writ of Mandamus |
| | ) | Circuit Court of the City of St. Louis |
| vs. | ) | Cause No. 1822-CC11663-01 |
| THE HONORABLE JOAN L. MORIARTY, CIRCUIT JUDGE, TWENTY-SECOND CIRCUIT COURT OF SAINT LOUIS MISSOURI, | ) | |
| Respondent. | ) | Filed: August 31, 2021 |

## OPINION SUMMARY

Relators State of Missouri Ex Rel. Kilroy Was Here, LLC, et al., seek a writ of mandamus or writ of prohibition directing the Honorable Respondent (1) to vacate Respondent's Order entered September 4, 2020, granting defendant Starr's Objections to and Motion to Quash the Subpoena directed to Sandberg Phoenix & von Gontard (SPvG); (2) to mandate that non-party SPvG produce for Relators' inspection and copying the documents that were the subject of the subpoena; (3) to produce witnesses for deposition on all relevant, non-privileged subjects; (4) to conduct an *in camera* review of all requested documents to determine the discoverability thereof.

PRELIMINARY ORDER IN MANDAMUS MADE PERMANENT

Writ Division Two Holds:

Respondent erroneously quashed the subpoena on the basis that all the materials and testimony sought were protected by the attorney-client privilege. Materials and testimony sought from SPvG are discoverable to the extent Phoenix acted outside the scope of his representation of Starr regarding its exposure for the bad faith refusal to settle the underlying case against Kilroy. Specifically, we find discoverable all materials and testimony to the extent that (1)

Phoenix acted as de facto co-counsel in Kilroy's defense, (2) communications claimed to be privileged were made in the presence of a third party, (3) any other exception to the attorney-client privilege applies.

Opinion by: James M. Dowd, P.J.

Angela T. Quigless, J., and Robin Ransom, S.J., concur.

Attorneys for Relators: Todd I. Muchnick, Aaron D. Haber, David M. Zevan, Rachel L. Roman, Anna E. Haber, Brent L. Martin, and Gregory L. Shevlin.

Attorneys for Respondent and Defendants: Gerald P. Greiman and AJ Bronsky

**THIS SUMMARY IS NOT PART OF THE OPINION OF THE COURT. IT HAS BEEN PREPARED FOR THE CONVENIENCE OF THE READER AND SHOULD NOT BE QUOTED OR CITED.**